

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LESLIE K. BOSTICK

COMPLAINANT

VS.

SOUTH CENTRAL BELL TELEPHONE COMPANY

DEFENDANT

CASE NO. 92-546

O R D E R

On December 11, 1992, Leslie K. Bostick ("Mr. Bostick") filed a formal complaint with the Commission against South Central Bell Telephone Company ("SCB"). SCB was notified of the complaint by Order of December 21, 1992, and filed its answer on January 4, 1993. On January 25, 1993, the Commission issued an Order scheduling a formal hearing. Subsequently, in a letter dated February 24, 1993, Mr. Bostick, due to poor health, requested that the Commission either hold the hearing in Clinton, Kentucky, or waive the hearing and issue a decision based on the evidence already submitted by the parties. On March 1, 1993, SCB by letter indicated to the Commission its willingness to waive its right to a formal hearing and let the Commission rule in this matter. By an Order dated March 3, 1993, the Commission cancelled the formal hearing and submitted the case for a decision based upon the record as it presently stands.

Mr. Bostick's complaint concerns telephone service to a residence located on property owned by Mr. Bostick. Mr. Bostick's grandson currently lives on the property and, on or about September 3, 1992, placed an order for telephone service. SCB alleges that to provide this service it must place 4,200 feet of 25-pair cable and 2,203 feet of buried wire; and that pursuant to its tariff, SCB must charge the grandson \$723, representing the cost of underground construction in excess of 750 feet. Mr. Bostick contends that his grandson should not have to pay this construction charge, but only the normal charge for service connection. He claims that in 1948 or 1949 his father granted to the Rural Electrification Administration and SCB an easement to set poles on his property on the condition that several farms in the vicinity, including the property involved in the complaint, would receive electric and telephone service. Mr. Bostick argues that due to this alleged easement SCB should not charge for the required construction.

SCB avers that it cannot waive the construction charges without being in violation of its tariff. SCB additionally indicates that if Mr. Bostick grants SCB an easement to place its facilities on the property, it will compensate him \$723. SCB further states that, with Mr. Bostick's authority, it is willing to apply this amount to the construction charges associated with his grandson's service. Apparently, Mr. Bostick refuses to sign the easement contending that his father's alleged easement should control.

SCB's General Subscriber Services tariff at Section A5.1.6 provides that SCB will provide any necessary underground construction at no charge to the customer up to a maximum of 750 feet. The customer is responsible for the cost of any underground construction in excess of 750 feet.

A utility cannot charge a person less than the amount prescribed in its tariff for any service to be rendered. KRS 278.160(2). Moreover, no utility can, as to rates or service, give any unreasonable preference or advantage to any person. KRS 278.170.

Mr. Bostick and SCB have not produced any written document memorializing the easement and the conditions alleged by Mr. Bostick. Hence, the Commission is forced to review Mr. Bostick's assertions regarding an apparent oral agreement. Mr. Bostick does not claim that he was present when his father and SCB purportedly agreed to the easement. No evidence has been presented to establish the exact location of the properties to be served and how long the easement was to be in effect. Furthermore, the events surrounding the alleged easement occurred over 40 years ago. These factors reflect the difficulty, if not the impossibility, of establishing the terms and conditions of the easement. In view of the foregoing, the Commission finds that Mr. Bostick has failed to produce sufficient evidence to establish that the easement was valid and that it should be enforced.

To install its facilities on a property, SCB must obtain an easement from the landowner. Mr. Bostick owns the property on which he wants SCB to install its facilities.

IT IS THEREFORE ORDERED that:

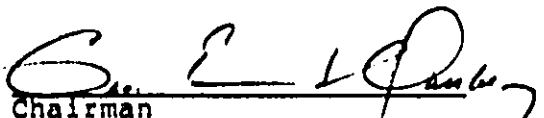
1. SCB shall obtain an easement from Mr. Bostick before providing service to the residence located on Mr. Bostick's property.

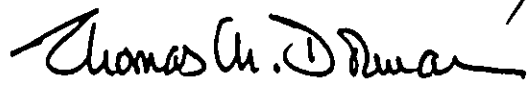
2. SCB shall compensate Mr. Bostick for said easement in an amount agreed upon between SCB and Mr. Bostick.

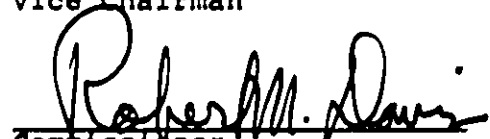
3. Pursuant to its tariffs, SCB shall charge \$723 to the appropriate person representing construction costs for providing service to the residence located on Mr. Bostick's property.

Done at Frankfort, Kentucky, this 19th day of April, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director